

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	18-cr-413 (JSR)
	:	
-v-	:	
	:	<u>MEMORANDUM ORDER</u>
ERVIN ORTIZ,	:	
	:	
Defendant.	:	
-----x	:	

JED S. RAKOFF, U.S.D.J.

Before the Court is Ervin Ortiz's motion for sentence reduction under 18 U.S.C. § 3582(c). On September 27, 2019, Ortiz pled guilty to participating in a conspiracy to distribute and possess with intent to distribute 1 kilogram and more of heroin and 33 grams and more of cocaine, in violation of 21 U.S.C. §§ 841(b)(1)(B) and 846. On May 20, 2021, the Court imposed a below-Guidelines sentence of 66 months in prison followed by five years' supervised release.

On July 11, 2021, fewer than two months after his lenient sentence was imposed, Ortiz filed a pro se motion for compassionate release. The compassionate release statute, as modified by the First Step Act, provides that after certain administrative exhaustion requirements are met, and after considering the factors enumerated in 18 U.S.C. § 3553(a), "the court ... may reduce the term of imprisonment ... if it finds that extraordinary and compelling reasons warrant such a reduction ... and that such a

reduction is consistent with applicable policy statements issued by the Sentencing Commission."

Ortiz cites as the "extraordinary and compelling" reason for his release certain medical conditions that he claims place him at an increased risk of severe coronavirus illness. Ortiz also cites the conditions of his confinement as exacerbating the risk he faces from the pandemic, describing in particular the conditions at the Metropolitan Detention Center, where he was, until recently, incarcerated.

As it noted at the time of his sentencing, the Court is not unsympathetic to Ortiz's medical conditions. However, even if assuming *arguendo* his conditions might give rise to an "extraordinary and compelling" reason satisfying one of the prongs of compassionate release, it is clear that another of the prongs, the applicability of 18 U.S.C. § 3553(a), precludes the relief that he seeks. Ortiz was sentenced only shortly before he filed the present motion and he cites no relevant change in circumstance in the intervening time. Indeed, in imposing its sentence, the Court explicitly considered and took account of the risks associated with the ongoing pandemic. See Transcript of May 20, 2021 Sentencing at 20. Accordingly, Ortiz's motion for compassionate release is denied.

SO ORDERED.

Dated: New York, NY
October 12, 2021



JED S. RAKOFF, U.S.D.J.